79. (new) The multi-layered thermoplastic container of claim 78 wherein:

said first polymeric layer has an average thickness of from about 5 to about 35 mils;

wherein said second intermediate layer has an average thickness of from about 0.1 to about 2 mils;

wherein said third polymeric layer has an average thickness of from about 1 to about 5 mils; and

wherein said container has an area stretch ratio of from about 1.5:1 to about 3:1.

**Election**

Applicants hereby elect, with traverse, Group III, claims 22-38 for prosecution on the merits. In response to the election of species requirement, Applicants hereby elect the species of co-polymer or ter-polymer of ethylene and a glycidyl acrylate for the second layer. Claims 1-12, 22-29, 38-47, and 57-79 are generic with respect to the elected species.

The Office Action contends that Groups I/II and III are related as combination and sub-combination because Group I/II claims do not require the layer thicknesses or stretch ratios recited in Group III claims. Applicants respectfully disagree that these Groups are related as combination and subcombination.

Group III claims are directed to the same two embodiments as Group I and II claims, varying only in breadth or scope of definition. To highlight this, claims 22 and 30 have been rewritten in dependent form to depend on claim 1 (Group I) and claim 13 (Group II), respectively. It is never appropriate to restrict between claims directed to the same embodiment. M.P.E.P. § 806.03. Applicant respectfully submits that the restriction between Group I/II and Group III claims is improper under M.P.E.P. § 806.03 and should be withdrawn.

As the Office Action recognizes, claim 38 is generic to second layers containing either glycidyl acrylate- or maleic anhydride-based co-polymers or ter-polymers. Claim 38 has been rewritten in dependent form to depend (indirectly via claim 79) on new independent claim 78, which is generic to Group I and II claims. New dependent claim 79 depends on claim 78 and recites the layer thicknesses and area stretch ratio as recited in claims 22 and 30. New claim 78 is a linking claim for Groups I and II.

It is respectfully requested that at least Group I and Group II claims be re-joined and examined together with the elected Group III claims (including new claims 78 and 79).

The Examiner is invited to contact the undersigned at the telephone number listed below if he believes doing so would be helpful to advance prosecution.

Respectfully submitted,

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## VERSION WITH MARKINGS TO SHOW CHANGES MADE

22. (amended) ~~A~~ The multi-layered thermoplastic container ~~comprising~~ of claim 1 wherein:

~~a first polymeric layer comprising a polyethylene terephthalate homopolymer, a polyethylene terephthalate co-polymer, or a blend thereof;~~ said first polymeric layer has ~~having~~ an average thickness of from about 5 to about 35 mils;

~~a second intermediate layer comprising a grafted or backbone co-polymer or ter-polymer of ethylene, a glycidyl acrylate, and optionally an acrylate selected from the group consisting of methacrylate, ethylacrylate, propylacrylate, butylacrylate, ethylhexylacrylate, and mixtures thereof;~~ wherein said second intermediate layer ~~having~~ has an average thickness of from about 0.1 to about 2 mils; ~~and~~

~~a third polymeric layer comprising high density polyethylene, low density polyethylene, linear low density polyethylene, or a blend thereof;~~ wherein said third polymeric layer ~~having~~ has an average thickness of from about 1 to about 5 mils; and

wherein said container has an area stretch ratio of from about 1.5:1 to about 3:1.

30. (amended) ~~A~~ The multi-layered thermoplastic container ~~comprising~~ of claim 13 wherein:

~~a first polymeric layer comprising a polyethylene terephthalate homopolymer, a polyethylene terephthalate co-polymer, or a blend thereof;~~ said first polymeric layer has ~~having~~ an average thickness of from about 5 to about 35 mils;

~~a second intermediate layer comprising a grafted or backbone co-polymer or ter-polymer of ethylene, maleic anhydride, and optionally an acrylate selected from the group consisting of methacrylate, ethylacrylate, propylacrylate, butylacrylate, ethylhexylacrylate, and mixtures thereof;~~ wherein said second intermediate layer ~~having~~ has an average thickness of from about 0.1 to about 2 mils; ~~and~~

~~a third polymeric layer comprising high density polyethylene, low density polyethylene, linear low density polyethylene, or a blend thereof;~~ wherein said third polymeric layer ~~having~~ has an average thickness of from about 1 to about 5 mils; and

wherein said container has an area stretch ratio of from about 1.5:1 to about 3:1.

38. (amended) ~~A~~ The multi-layered thermoplastic container ~~comprising~~ of claim 79 wherein:

~~a first polymeric layer comprising a polyethylene terephthalate homo-polymer, a polyethylene terephthalate co-polymer, or a blend thereof;~~ said first polymeric layer ~~having~~ has an average thickness of from about 12 to about 18 mils;

~~a second intermediate layer selected from the group consisting of ethylene/glycidyl methacrylate co-polymer, ethylene/malcic anhydride co-polymer, ethylene/glycidyl methacrylate/methacrylate ter-polymer, ethylene/glycidyl methacrylate/ethylacrylate ter-polymer, ethylene/glycidyl methacrylate/butyl-acrylate ter-polymer, ethylene/glycidyl methacrylate/ethylhexylacrylate ter-polymer, ethylene/malcic anhydride/methacrylate ter-polymer, ethylene/malcic anhydride/ethylacrylate ter-polymer, ethylene/malcic anhydride/ butylacrylate ter-polymer, ethylene/malcic anhydride/ethylhexylacrylate ter-polymer, and mixtures thereof;~~ wherein said second intermediate layer ~~having~~ has an average thickness of from about 0.1 to about 1.5 mils; and

~~a third polymeric layer comprising high density polyethylene, low density polyethylene, linear low density polyethylene, or a blend thereof;~~ wherein said third polymeric layer ~~having~~ has an average thickness of from about 2 to about 4 mils~~;~~

~~wherein said container has an area stretch ratio of from about 1.5:1 to about 3:1~~.